

R151. Commerce, Administration.

R151-3. Americans With Disabilities Act Rules.

R151-3-1. Authority and Purpose.

This rule is adopted pursuant to federal regulation (28 CFR 35.107) to provide procedures for the prompt and equitable resolution of complaints filed in accordance with 42 U.S.C. 12201. Title II of that federal statute provides no qualified individual with a disability, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by this or any such entity. This rule also is adopted pursuant to Subsection 63-46a-3 (2).

R151-3-2. Definitions.

(1) "The ADA Coordinator" means the department's coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(2) "The ADA State Coordinating Committee" means the committee appointed or authorized by the governor to oversee the ADA coordinators of the various state agencies.

(3) "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(4) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(5) "Individual with a disability" (hereinafter "individual") means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

(6) "Department" means the Department of Commerce, its divisions, commissions or boards, or any other instrumentality of the department.

R151-3-3. Filing of Complaints.

(1) Any individual who believes the department has discriminated against him in violation of 42 U.S.C. 12201 or regulations thereunder may file a complaint with the department.

(2) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination.

(3) The complaint shall be filed with the department's ADA Coordinator in writing, or in another accessible format suitable to the individual.

(4) Each complaint shall:

- (a) include the individual's name and address;
- (b) include the nature and extent of the individual's disability;
- (c) describe the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
- (d) describe the action and accommodation desired by the individual; and
- (e) be signed by the individual or his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R151-3-4. Investigation of Complaint.

(1) The ADA Coordinator shall investigate each complaint received to the extent necessary to assure that all relevant facts are determined. This may include gathering all information listed in R151-3-3 (4) if it is not made available by the individual.

(2) When conducting the investigation and preparing a decision, the ADA Coordinator may consult the department's, or the state's legal, human resource, and budget staffs in determining what action, if any, should be recommended. Before making any decision that would involve the following, the ADA Coordinator shall consult with the ADA State Coordinating Committee:

- (a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation authority; or
- (b) facility modifications; or
- (c) reclassification or reallocation in grade.

R151-3-5. Issuance of Decision.

(1) Within 20 working days after receiving the complaint, the ADA Coordinator shall issue a decision in writing or other suitable format stating what action, if any, should be taken by the department on the complaint.

(2) If the ADA Coordinator is unable to reach a decision within 20 working days, he shall notify the individual in writing or other suitable format why the decision is being delayed and what additional time will be needed to reach a decision.

(3) Decisions shall include a statement of the individual's right of further appeal, if any.

R151-3-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be in writing and filed with the executive director of the department, or his designee, other than the ADA Coordinator.

(3) The filing of an appeal shall be considered as authorization by the individual to allow access to all information, including information classified as private, protected or controlled, by the executive director or his designee.

(4) The appeal shall describe in sufficient detail the reasons the individual believes the ADA Coordinator's decision was in error, incomplete, ambiguous, or otherwise improper, and the relief sought on appeal.

(5) The executive director or his designee shall issue a written decision stating the reasons for his conclusions and recommendations. Additional investigation may be conducted if necessary to clarify questions of fact. The executive director shall comply with the provisions of R151-3-4 (2) in reaching a decision.

(6) The decision shall be issued within ten working days after receiving the appeal, and shall be in writing or in another accessible format suitable to the individual.

(7) If the executive director or his designee is unable to reach a decision within ten working days, he shall notify the individual in writing or in another acceptable format why the decision is being delayed and the additional time needed to reach a decision.

R151-3-7. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected under Section 63-2-304 until the ADA Coordinator or executive director issues the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private or controlled. All other information gathered as part of the complaint record shall be classified as private. Only the written decision of the ADA Coordinator or the executive director shall be public.

R151-3-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the provisions of the Utah Antidiscrimination Act; 28 CFR Subpart F, Part 35.170 et seq., 1991 edition, which governs Federal ALA Complaint Procedures or any other state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, physically handicapped persons*

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